



Patrick Standard Terms and Conditions – Intermodal Services (Adelaide Rail)

These standard terms and conditions (**Conditions**) together with the current Rate Card and the Adelaide Rail Operating Protocol (**Protocol**) are the terms and conditions on which Patrick Stevedores Operations Pty Ltd (ACN 065 375 840) (**Patrick**) will provide Intermodal Services, to the Customer (**the Agreement**)

1. Agreement

- 1.1. Patrick agrees to provide the Intermodal Services to the Customer on the terms and conditions of these Conditions, the Adelaide Rail Operating Protocol and the Rate Card.
- 1.2. The Agreement will take precedence over any terms and conditions contained in any documentation provided by the Customer.
- 1.3. In the event of any inconsistency between:
 - (a) these Conditions and the Rate Card and/or the Adelaide Rail Operating Protocol, these Conditions will prevail to the extent of any inconsistency; and
 - (b) the Protocol and the Rate Card, the Protocol will take precedence.
- 1.4. The Customer acknowledges and agrees that:
 - (a) it has read and understood the Agreement and agrees to be bound by it;
 - (b) receipt of the Intermodal Services is subject to compliance with the Agreement;
 - (c) it will and will procure that its Associates will comply with the Agreement when booking and receiving the Intermodal Services; and
 - (d) Patrick will not be liable for any delay or disruption to or for any suspension or withdrawal of the Intermodal Services which arises due to the non-compliance of the Customer or its Associates with the Agreement.

2. Invoices and payment

- 2.1. Unless otherwise notified by Patrick, Patrick or another member of the Patrick Group if so designated, will invoice the Customer weekly in respect of the Intermodal Services provided during the preceding week.
- 2.2. The Customer will pay all other applicable Additional Fees and Charges. The Customer acknowledges that Additional Fees and Charges may be amended by Patrick from time to time.
- 2.3. The Customer must pay into the account nominated by Patrick the amount invoiced in full within thirty (30) days of the date of the relevant invoice without discount, deduction, counterclaim or set-off (subject to any relevant regulatory requirements).
- 2.4. If the Customer has not paid an amount due under the Agreement on or by the due date, the Customer must pay interest on the amount of any money not paid at the Agreed Rate. The interest payable under the clause will accrue daily from and including the due date for payment up to the actual date of payment and may be capitalised by Patrick at monthly intervals.
- 2.5. The payment by Patrick to the Customer of any amounts under the Agreement is subject to compliance by the Customer with the terms and conditions of the Agreement.

3. Obligations

3.1. Patrick obligations

- (a) Patrick will, and will ensure that its Associates where relevant:
 - (i) comply with all applicable laws in offering the Intermodal Services; and
 - (ii) ensure that the Intermodal Services are carried out in a competent manner, with due and proper diligence, skill and expedition.
- (b) Patrick is not a common carrier, accepts no liability as such and may agree or refuse to contract with the Customer in its absolute discretion.

- (c) Patrick is not, and will not be deemed to be, a consignor as defined by the relevant laws in relation to the transport of Dangerous Goods in the relevant Jurisdiction, and accepts no liability as such. The Customer authorises Patrick to name the Customer or another person as the consignor in any documentation where applicable.
- (d) Patrick may, in its absolute discretion refuse to provide the Intermodal Services or provide the Intermodal Services in a manner other than that previously agreed with the Customer, where Patrick considers that it is reasonable and necessary to do so (including by reason of an order, direction or recommendation of a Government Agency).
- (e) If in Patrick's reasonable opinion:
 - (i) the Goods are or are liable to become Dangerous Goods;
 - (ii) the Goods do not comply with all applicable laws; or
 - (iii) the Goods are unsuitable to be handled using the equipment and operating procedures normally employed in transporting the Goods,
 Patrick may:
 - (iv) refuse to provide the Intermodal Services in respect of those Goods; or
 - (v) take whatever measures it considers to be reasonably necessary at the Customer's risk and expense in order to cause the Goods and their transportation to comply with all applicable laws or be suitable for handling.
- (f) If in Patrick's reasonable opinion the weight of any Goods or Container significantly varies from the weight as declared on the documentation provided to Patrick and or its Associates by the Customer, Patrick may:
 - (i) refuse to provide the Intermodal Services in respect of those Goods or Containers;
 - (ii) advise relevant regulatory authorities; and
 - (iii) require the Customer to take the necessary measures to rectify and re-declare the correct weight and amend the documentation at their risk and expense.
- (g) Patrick (or a third party appointed by Patrick) may conduct an audit or review of the Customer's compliance with its obligations under the Agreement including any applicable laws, and the Customer agrees to comply with any reasonable requests made by Patrick as a result of any such audit or review.
- (h) Patrick has no obligation to inspect the Goods and no inspection will increase Patrick's liability under the Agreement.
- (i) Patrick is not responsible for and has no liability in respect of any inaccuracy in the description of the Goods.

3.2. Customer obligations

The Customer warrants and represents that it is the authorised agent of the person owning (or having an interest in) the Goods and enters into the Agreement as authorised agent of that person. The Customer further warrants and agrees that it will, and will procure that its Associates:

- (a) Incorporate an effective 'Himalaya clause' in respect of any Bill of Lading under which the Goods are consigned:
 - (i) pursuant to which Patrick and its Associates have, as against any other party, the benefit of every exemption, limitation, condition, liberty, right, defence and immunity contained in that Bill of Lading; and
 - (ii) the benefit of which is deemed to apply to Patrick and its Associates from the time at which the Goods are received at the Port (whether for loading or discharge) irrespective of whether the Bill of Lading was issued prior to the arrival of the Goods;
- (b) provide Patrick and/or its Associates (as applicable) in a timely manner with any such information as is reasonably required for the efficient conduct of the provision of the Intermodal Services;
- (c) comply with all applicable laws, statutes and regulations in force from time to time including *the Modern Slavery Act 2018 (Cth)* and all other applicable laws, regulations and rules related to modern slavery and shall provide Patrick all necessary assistance, information and documentation to enable Patrick to comply with, and to verify the Customer's compliance with, such laws;
- (d) comply with any policies or procedures of Patrick and its Associates (as applicable) relating to safety and security in the provision of Intermodal Services (as notified from time to time);
- (e) comply with the Chain of Responsibility Laws in respect of the Goods and their transport;

- (f) allow Patrick and its Associates (as applicable) to obtain immediate access to any Commercial Document (as that term is defined in the *Customs Act 1901 (Cth)*) where Patrick is required to produce the Commercial Document at the request of a Government Agency;
- (g) ensure the Goods are accurately described in the relevant delivery order and all relevant instructions in relation to their handling, care and control will be provided to Patrick and/or its Associates (as applicable);
- (h) ensure the Goods are safely packed, secured and clearly identified and labelled when presented to Patrick and/or its Associates (as applicable);
- (i) ensure the packaging, identification, labelling and handling of the Goods, and any documentation and instructions pertaining to the Goods or the handling of the Goods, comply with all applicable laws, regulations and standards;
- (j) ensure the weight and dimensions of the container (including the weight of the Goods) which is specified in the documentation is accurate;
- (k) ensure that any Dangerous Goods or Temperature Controlled Goods will only be tendered in compliance with the Adelaide Rail Operating Protocol; and
- (l) ensure that no spills of a Contaminant occur in any location in which the Intermodal Services are being carried out.

Subcontracting

Patrick may subcontract the Intermodal Services in whole or in part without notice to the Customer and all benefits, defences, exceptions, immunities and limitations of liability under the Agreement and at law which apply to Patrick will apply in respect of a claim against Patrick's subcontractor. Where Patrick subcontracts the Intermodal Services in whole or in part, Patrick remains primarily liable for the provision of the Intermodal Services in accordance with the Agreement.

3.3. Restructure Event

Where the Customer is subject to a restructure, merger or Change of Control, (Restructure Event) the Customer shall notify Patrick the details of the Restructure Event, promptly upon becoming aware of such Restructure Event or potential Restructure Event.

4. Containers and Cargo

- 4.1.** The Customer acknowledges that the Protocol contains important obligations in respect of the presentation, storage and handling of Goods, containers and associated documentation in connection with the provision of the Intermodal Services. Without limiting the Customer's obligations under clause 1.4, the Customer agrees to comply with all such obligations contained in the Protocol.
 - 4.2.** Patrick and its Associates reserve the right to refuse carriage of a container if it is deemed unfit to travel at point of pick-up or delivery for receipt of the Intermodal Services. The Customer will bear any costs, liabilities and expenses associated with containers which are unfit to travel (including any rectification costs for such containers) or in relation to which the Customer or its Associates have not complied with the Protocol.
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5. Liability

5.1. General

- (a) To the extent permitted by law and except as expressly set out in the Agreement, Patrick makes no and expressly excludes all warranties and representations with respect to the Intermodal Services.
- (b) Where the Customer has the benefit of a warranty or condition regarding the Intermodal Services provided under the Agreement which cannot by law be excluded, Patrick's liability (and that of its Associates) for breach of any such warranty or condition is limited to, at Patrick's sole option:
 - (i) the re-supply of the Intermodal Services or
 - (ii) the payment of the costs of having those Intermodal Services supplied again.
- (c) Each representation and warranty in the Agreement is to be construed independently of each other representation and warranty in, and each other provision of, the Agreement.

5.2. Patrick liability

- (a) Except to the extent caused or contributed to by a negligent act or omission of Patrick or any of its Associates, neither Patrick nor its Associates will be liable in tort, contract, bailment or otherwise to the Customer (or any of its Associates) for anything arising out of or relating to any:
 - (i) breach of the Agreement or negligence caused or contributed to by the Customer, its Associates or service providers;
 - (ii) acts or omissions on the part of any third party;
 - (iii) incident, including (without limitation) discharge, spill or release of a Contaminant;
 - (iv) damage to or deterioration of any real or personal property, including but not limited to any vehicle, train, Goods or containers or any Terminal or its surrounding environs;
 - (v) damage to a Container or its contents; or
 - (vi) personal injury (including illness or death).
- (b) The liability of Patrick and its Associates under the Agreement and at law will be limited in all cases to loss and damage resulting directly from and only to the extent caused or contributed to by negligent act or omission of Patrick or its Associates in accordance with the following limits:
 - (i) for any loss or damage to a reefer container, up to maximum of \$30,000.00;
 - (ii) for any other container, up to a maximum of \$5,000;
 - (iii) for any loss or damage to Goods (contents of a container), up to a maximum of \$100,000;
 - (iv) for personal injury (including illness or death) up to a maximum of \$5,000,000; and
 - (v) for any other loss or damage, up to a maximum of \$100,000,in each case, for any one event or series of related events.
- (c) The Customer may only make a Claim against Patrick if the Claim exceeds \$500 for any one event.
- (d) Where a Claim by the Customer relates to a claim or action by a third party against the Customer, upon the written request of Patrick, the Customer shall permit Patrick to take over the defence of such third-party claim or action, provided always that it is reasonably possible and does not prejudice the Customer and that all costs of the defence are borne by Patrick. If Patrick does not wish to take over the defence or it is not possible to do so, the Customer shall in any event consult with Patrick in relation to managing the defence.

5.3. Notification of Claim

- (a) Patrick will not be liable for any Claim by the Customer unless written notice of the Claim is given to Patrick within fourteen (14) days of the relevant incident giving rise to the Claim.
- (b) Patrick will be discharged from all liability for a Claim unless proceedings are commenced within one year of the date that notice of that Claim is given to Patrick.

5.4. Customer indemnities

- (a) Subject to clause 5.4(b) and 5.5, the Customer indemnifies Patrick and its Associates in respect of any Liability arising from a breach of the Agreement or any negligent act or omission of the Customer or any of its Associates which relates to:
 - (i) damage to or deterioration of any real and personal property (including but not limited to any truck, train, container, goods, equipment or Terminal);
 - (ii) personal injury (including illness or death);
 - (iii) any incident, including but not limited to those arising out of or related to:
 - A. the movement, treatment, removal, destruction, discharge, spill or release of a Contaminant; or
 - B. any failure of the Customer or its Associates to comply with any applicable Port procedures or Patrick procedures for Contaminants;
 - (iv) a breach of any law or regulation; or
 - (v) the failure of the Customer to comply with clause 11.2 (Confidentiality)
- (b) The Customer will not be liable to Patrick for any Claim under clause 5.4(a) to the extent that the Claim resulted from any negligent act or omission of Patrick or its Associates.

5.5. Exclusion of Consequential Loss

Despite any other provision of the Agreement, neither party will be liable to the other for any Consequential Loss.

5.6. Indemnities

- (a) Each indemnity in the Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of the Agreement.
- (b) Each indemnity, limitation, condition and liberty in the Agreement and every right, exclusion from or limitation of liability, defence and immunity of whatever nature applicable to Patrick or to which Patrick is entitled under the Agreement will be available to Patrick and to its Associates. Where Patrick is deemed to be acting as agent or trustee on behalf of and for the benefit of its Associates, those Associates are, to this extent, deemed to be party to the Agreement and may enforce the terms of this clause 5.6(b) against the Customer.
- (c) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by the Agreement.
- (d) A party must pay on demand any amount it must pay under an indemnity in the Agreement.

6. Insurance

- 6.1. The Customer must at all times during which it receives the Intermodal Services, have in place with a reputable insurer that has a credit rating of at least 'A' issued by Standard and Poors:
 - (a) third party property insurance and public risk insurance to a minimum value of \$20,000,000 in respect of any single event;
 - (b) insurance in respect of any containers or Goods in respect of which the Intermodal Services are being provided that covers for total or partial loss, damage, theft, or destruction in such amounts as are reasonable in the circumstances; and
 - (c) such insurances as are required by law or good industry practice.
- 6.2. The Customer must notify Patrick of any cancellation of a policy that it is required to take out and maintain under clause 6.1.
- 6.3. The Customer must provide to Patrick on request a copy of a certificate of currency of insurance and any endorsement required in respect of a policy that the Customer is required to take out and maintain under clause 5.1.

7. Change of Law

If a change in law or regulation (including the imposition of an additional regulatory requirement) (**Change in Law**) occurs at any time, then to the extent that the Change in Law:

- (a) directly results in an increase in the cost to Patrick of providing the Intermodal Services, Patrick may increase its charges relating to the Intermodal Services to reflect the Change in Law by giving notice to the Customer; and
- (b) results in Patrick or its Associates being required to undertake certain tasks, cease to undertake certain tasks or otherwise change the manner in which it carries out the Intermodal Services, Patrick is entitled to amend the Agreement in a reasonable manner to reflect the Change in Law by giving notice to the Customer.

8. Termination

- 8.1. Subject to clause 8.2 if either party (**Defaulting Party**) commits a material breach of the Agreement, the other party (**Non-Defaulting Party**) may give notice to the Defaulting Party of that breach and requiring the Defaulting Party to remedy that breach within sixty (60) days of the date of the notice. If the Defaulting Party fails to rectify the breach within sixty (60) days of the date of the service of the notice, the Non-Defaulting Party may by notice terminate the Agreement with immediate effect.
- 8.2. If the Customer defaults in the payment of any consideration under the Agreement, Patrick may give notice to the Customer to rectify the default within fourteen (14) days of the date of the notice and if the Customer fails to rectify the default within fourteen (14) days of the date of the notice, Patrick may (in its absolute discretion):
 - (a) suspend the Intermodal Services until such time as that amount is paid; or
 - (a) terminate the Agreement with immediate effect,
- 8.3. Either party may terminate the Agreements with immediate effect if the other party is affected by an Insolvency Event or a Critical Event. Where a party is so affected, it shall immediately notify the other party and all outstanding amounts under the Agreements shall become due and payable.
- 8.4. Without prejudice to its other rights under the Agreement, if Patrick becomes aware of a breach of clause 1.4(c), Patrick may at any time suspend the Customer's right (or the right of a specific Associate of the Customer) to receive

the Intermodal Services. If such breach relates only to a specific Associate of the Customer, Patrick may restrict the exercise of its rights under this clause 8.4 to that specific Associate, where Patrick considers that doing so would be sufficient to address the breach and adequately protect Patrick's business.

- 8.5.** If Patrick elects to suspend the Customer's right (or the right of a specific Associate of the Customer) to receive the Intermodal Services under clause 8.4, it must notify the Customer of the following matters:
- (a) the reason that Patrick has elected to suspend the relevant rights;
 - (b) acting reasonably, the steps that the Customer and/or relevant Associate must take to remedy the breach in order for the suspension to be removed; and
 - (c) the date by which the Customer must take those steps.
- 8.6.** Termination of the Agreement does not affect any rights which a party has against the other in respect of any breach of the Agreement occurring prior to termination.

9. Dispute Resolution

- 9.1.** The parties must attempt to resolve any Dispute arising in relation to the Agreement in accordance with this clause 9 and must not commence any court proceedings until the process set out in this clause 9 has been exhausted.
- 9.2.** A party claiming that a Dispute has arisen must give written notice to the other party setting out the nature of the Dispute (Dispute Notice).
- 9.3.** Within 10 Business Days of the Dispute Notice, representatives of each party with authority to resolve the Dispute must meet in an effort to resolve the Dispute by negotiation
- 9.4.** Where a Dispute cannot be settled within 20 Business Days of the parties' meeting, the parties will endeavour to settle the matter with the assistance of a mediator agreed by the parties or if cannot be agreed within 5 Business Days a mediator appointed by the Institute of Arbitrators and Mediators Australia. Either party may request the president of the Institute of Arbitrators and Mediators Australia to appoint a mediator to the Dispute and must, at the time of making that request, provide a copy of that request to the other party.
- 9.5.** The mediator may adopt such procedures as he or she sees fit to resolve the Dispute.
- 9.6.** Where the Dispute is mediated, each party will each be liable for half of the total costs of the mediation (excluding each party's own legal costs).
- 9.7.** If the Dispute is not resolved within one calendar month of the appointment of a mediator, either party may commence court proceedings.
- 9.8.** Until the Dispute is resolved, the parties must continue to observe their obligations under the Agreement (unless the Dispute relates to an amount payable under an invoice, in which case, the Customer's obligation to pay an amount is suspended to the extent of the Disputed amount until such time as the Dispute is resolved).
- 9.9.** Nothing in this clause precludes a party from seeking urgent injunctions or other urgent interlocutory relief.

10. Force Majeure

- 10.1.** Subject to clause 10.6 and any applicable regulatory requirements, Patrick will be released from its obligations under the Agreement to the extent and for the duration that performance of the Agreement is delayed, hindered or prevented by a Force Majeure Event.
- 10.2.** If a Force Majeure Event occurs or is likely to occur, Patrick must give prompt notice of the Force Majeure Event and must detail what action is being taken to overcome its effects in writing.
- 10.3.** Patrick must use its reasonable endeavours to promptly overcome any Force Majeure Event and restore its ability to perform. However, nothing will oblige Patrick to
- (a) settle any strike or other industrial dispute on terms contrary to its wishes; or
 - (b) contest the validity or enforceability of any law, regulation or legally enforceable order by way of legal proceedings.
- 10.4.** The Customer will provide reasonable assistance to the affected party if a Force Majeure Event occurs.
- 10.5.** Subject to clause 10.6, Patrick will resume its obligations under the Agreement as soon as it or its Associates (as applicable) is no longer affected by a Force Majeure Event.
- 10.6.** If a Force Majeure Event exceeds the period of 3 calendar months, Patrick may provide notice to the Customer terminating the Agreement with immediate effect.

11. Miscellaneous

11.1. Notices

- (a) A notice, consent or other communication by a party under the Agreement must be in writing and must either be delivered by hand, sent by pre-paid registered mail or courier to the registered head office of the other party or sent by email (in which case the machine from which the communication was sent must produce a report that confirms that the message was successfully delivered, in full).
- (b) A notice, consent or other communication that complies with this clause is regarded as being given and received:
 - (i) if it is delivered by hand, by pre-paid registered mail, by courier or by other similar traceable form of delivery - on actual receipt; or
 - (ii) if it is delivered by email, on the Business Day on which it was received (or, if received after 5:00pm local time in the place of receipt or on a day that is not a Business Day, at 9am on the next Business Day).

11.2. Confidentiality

The Customer must keep confidential:

- (a) the terms of the Agreement (including any Rate Card); and
- (b) any other information provided by Patrick to the Customer in relation to the Agreement or the provision of the Intermodal Services that is by its nature is confidential

and must not disclose or permit or cause any person to disclose such information or terms, without Patrick's consent (except where such disclosure is required by law).

This clause survives the termination or expiry of the Agreement for period of two (2) years

11.3. Governing Law and Jurisdiction

The Agreement is governed and construed in accordance with the law applying in the Jurisdiction and each party irrevocably submits to the exclusive jurisdiction of the courts of that place.

11.4. Amendment

- (a) Patrick may amend the Agreement from time to time by providing the Customer with at least one (1) month's notice in writing, unless a shorter period of time is required in response to changes to (or the introduction of) any law or regulation or for urgent operational reasons.
- (b) The Rate Card will set out the Rates for the period during which the Rate Card is stated to apply (**Rate Period**). Patrick may in its absolute discretion, vary the Rates at the end of the Rate Period.
- (c) No other variation to the Agreement will be of any effect unless agreed in writing between the parties.

11.5. Assignment

- (a) The Customer cannot assign, novate or otherwise transfer any of its rights, interests, entitlements or obligations (or the benefit of the same) under the Agreement. without the prior written consent of Patrick.
- (b) Patrick may assign or transfer the Agreement to a member of the Patrick Group without the Customer's consent.

11.6. Waiver of rights

- (a) Failure to exercise or enforce, or delay in enforcing or exercising, or the partial exercise or enforcement of a right, power or remedy provided by law or under the Agreement does not preclude or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under the Agreement.
- (b) Any waiver or consent given by a party under the Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of the Agreement operates as a waiver of another breach of that term or of a breach of any other term of the Agreement.

11.7. Severability

If at any time a provision of the Agreement is or becomes illegal, invalid or unenforceable in any respect under the law

of any relevant jurisdiction, that will not affect or impair the legality, validity or enforceability of any other provision of the Agreement.

11.8. Relationship

Nothing in this Agreement creates a relationship of employer and employee, principal and agent, partnership or similar between the parties.

11.9. Rights

- (a) All rights, immunities, indemnities and limitations of Liability in the Agreement will continue to have their full force and effect in all circumstances and notwithstanding any breach of the Agreement by a party or any other person entitled to the benefit of such provisions, or termination of the Agreement.
- (b) Any right that a person may have under the Agreement is in addition to, and does not replace or limit, any other right that the person may have.

11.10. Goods and Services Tax

- (a) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under the Agreement are exclusive of GST.
- (b) If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member, on any supply made under or in connection with the Agreement, the recipient of that supply will pay to the supplier an amount equal to the GST payable on the supply.
- (c) The recipient will pay the amount referred to in clause 11.10(b) in addition to and at the same time that the consideration for the supply is to be provided under the Agreement.
- (d) The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 11.10(b).
- (e) If the GST payable in relation to a supply made under or in connection with the Agreements varies from the additional amount paid by the recipient under clause 11.10(b) then the supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from, the recipient. Any payment, credit or refund under this clause 11.10(e) is deemed to be a payment, credit or refund of the additional amount payable under clause 11.10(b).
- (f) Where a party is required under or in connection with the Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
 - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.
- (g) In this clause 11.10, words and expressions which are not defined in the Agreement but which have a defined meaning in GST Law, have the same meaning as in the GST Law

11.11. Costs

- (a) Subject to clause 11.11(b), each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing the Agreement.
- (b) The Customer must pay any stamp duty payable in relation to the execution or performance of the Agreement.

11.12. Further Acts

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to the Agreement.

11.13. Entire Agreement

To the extent permitted by law, in relation to its subject matter, the Agreement embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties and supersedes any prior written or other agreement of the parties.

11.14. Additional Services

From time to time, the Customer may request that Patrick provide Additional Services. Where a request for Additional Services is made, Patrick will prepare a Rate Card detailing the Additional Services it will provide and the cost for those Additional Services. Patrick will provide the Additional Services to the Customer on the terms and conditions of the

12. Definitions and interpretation

12.1. Definitions

In this Agreement, terms defined in the Quote or Rate Card have the meaning given in those documents and:

Additional Fees and Charges means the fees and charges payable in addition to the Rates as published on Patrick's website at www.patrick.com.au from time to time.

Additional Services means any services additional to the Intermodal Services that are agreed in writing to be provided by Patrick to the Customer.

Agreed Rate means 2% above the Reserve bank of Australia's "Cash Rate Target" at the time the outstanding amount is paid.

Associate means a party's employees, officers, servants, agents and subcontractors and, in the case of the Customer also includes any person who has an interest in the Goods and their respective employees, officers, servants, agents and subcontractors.

Business Day means a day which is not a Saturday, Sunday or Public Holiday in the Jurisdiction.

Claim means a demand, claim, action or proceeding made or brought by or against a person, however arising and whether present, unascertained, immediate, future or contingent.

Consequential Loss means any indirect or consequential loss.

Container Terminal means a container terminal at Port of Melbourne operated by:

- (a) Patrick; or
- (b) DP World Australia; or
- (c) Victoria International Container Terminal Ltd.

Contaminant means a Dangerous Good or noxious or hazardous substance which, having regard to the quantity and location of the substance and other substances in conjunction with which it is stored or used, is capable of causing material harm to the environment.

Customer means the person/s identified in the Rate Card or if no Rate Card exists, the person receiving the Intermodal Services.

Dangerous Goods means dangerous goods as defined in the Australian Dangerous Goods Code and, to the extent not otherwise stated in the Australian Dangerous Goods Code, means any Goods which are dangerous, volatile, explosive, inflammable or offensive or which may become so, or which may be come harmful to any person, property or the environment.

Dispute means any controversy, claim or dispute arising out of or in relation to the Agreement.

Force Majeure Event means acts of god (storms, cyclones, epidemics, natural disasters etc.), strikes, terrorism, acts of a public enemy, riots, malicious damage, sabotage, and / or any production or operational shutdown which is ordered by a Government Agency or by law or regulation (albeit which is not due to the act or default of the affected party) and other similar events or circumstances, which cause a party to be delayed or unable, wholly or in part, to perform any obligations under the Agreement but which Patrick is not able to prevent or overcome, or the effects of which the affected party is not reasonably able to predict and take measures to avoid by the exercise of reasonable operational, technical and commercial diligence and prudence.

Goods mean the cargo, baggage, motor vehicle or item in relation to which the Intermodal Services have been or are to be performed.

Government Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Interest means the aggregate of the relevant Reserve Bank of Australia Cash Rate Target plus two percent (2%).

Insolvency Event means being in liquidation or provisional liquidation or under administration, having a controller or receiver (as defined in the *Corporations Act*) or analogous person appointed to it or any of its property (other than for the purpose of restructuring whilst solvent), being taken under section 459F(1) of the *Corporations Act* to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent.

Intermodal Services means:

- (a) For imports – the collection from the relevant Container Terminal, handling, transportation and delivery to the Intermodal Terminal; and
- (b) For exports – the receipt at the Intermodal Terminal, handling, transportation and delivery to the relevant Container Terminal,

of containers and includes any Additional Services.

Intermodal Terminal means the Adelaide Freight Terminal operated by Pacific National in Adelaide.

Jurisdiction means the state in which the Cargolink Services are supplied by Patrick, or where supplied in multiple jurisdictions, in the state in which the majority of the Cargolink Services are performed.

Patrick's website means the website found at www.patrick.com.au

Protocol means the Adelaide Rail Operating Protocol as amended from time to time and published on Patrick's website.

Rates means the rates set out in the Rate Card as varied in accordance with the Agreement.

Rate Card means the current rate card sent by Patrick to the Customer setting out the rates for the Intermodal Services.

Temperature Controlled Goods means Goods which require temperature control.

12.2. Interpretation

In this Agreement headings are for convenience only and do not affect interpretation and unless the context indicates a contrary intention:

- (a) an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (b) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document (including the Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of the Agreement, and a reference to the Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "**includes**" in any form is not a word of limitation; and
- (j) a reference to "\$" or "dollar" is to Australian currency.